



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

June 26, 2000

H.R. 3113 **Unsolicited Commercial Electronic Mail Act of 2000**

As ordered reported by the House Committee on Commerce on June 14, 2000

SUMMARY

H.R. 3113 would enact new restrictions on the transmission of unsolicited commercial electronic mail (UCE). Under this bill, consumers would have the right to file a complaint with the Federal Trade Commission (FTC) if they receive UCE after previously opting not to receive such electronic mail. Also, the bill would require that all UCE messages identify themselves as UCE, explain how the consumer could discontinue receiving UCE, and contain accurate information about the senders and how to contact them. The FTC would be required to issue compliance orders to persons who violate these provisions. H.R. 3113 also gives consumers the right to initiate private action to prohibit violations of the bill and recover damages. Finally, the bill would direct the FTC to issue a study within 18 months on the effectiveness and enforcement of these provisions.

CBO estimates that implementing H.R. 3113 would cost about \$13 million in 2001 and about \$60 million over the 2001-2005 period, assuming appropriation of the necessary amounts. The cost of implementing the bill could decline over time if it discourages UCE. H.R. 3113 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 3113 contains intergovernmental mandates as defined in UMRA, but CBO estimates that complying with these mandates would result in no direct costs to state and local governments and thus would not exceed the threshold established by that act (\$55 million in 2000, adjusted annually for inflation). The bill would preempt certain state and local laws to regulate UCE, and certain state and local liability laws. Tribal governments would not be affected.

H.R. 3113 would impose private-sector mandates, as defined by UMRA, on senders of unsolicited commercial electronic mail. CBO estimates that the direct costs of those

mandates would not exceed the annual threshold established by UMRA for private-sector mandates (\$109 million in 2000, adjusted for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3113 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars				
	2001	2002	2003	2004	2005
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	13	11	11	12	12
Estimated Outlays	13	11	11	12	12

BASIS OF ESTIMATE

CBO estimates that the FTC would spend about \$13 million in 2001 and \$11 million to \$12 million annually in subsequent years to implement H.R. 3113, assuming appropriation of the necessary amounts. (Annual costs would rise slightly to cover anticipated inflation.) However, the total costs of implementing H.R. 3113 could decline if the bill is effective in reducing the amount of unlawful UCE over time.

The FTC's administrative costs would increase primarily because H.R. 3113 would require the agency to notify senders of UCE when they violate provisions of the bill. The FTC currently receives an average of about 10,000 complaints per day regarding UCE. Based on information from the FTC, CBO estimates that the staff costs of responding to these complaints would be \$6 million to \$7 million a year. We estimate that purchasing new computer equipment to handle UCE cases would cost \$5 million in 2001 and \$2 million a year in subsequent years.

For those violators who continue to send unlawful UCE after they have been notified of violations, H.R. 3113 requires that the FTC send a complaint by certified mail. CBO estimates that the cost of sending these formal complaints would be \$2 million a year.

If the complaint fails to end the violations, then H.R. 3113 requires that the FTC issue an order to the violator. The FTC also has the option of referring the case to the federal courts.

CBO estimates that these costs would not be significant because of the limited number of cases that would reach this stage in the enforcement process.

H.R. 3113 also requires the FTC to complete, within 18 months, a study of the effectiveness and enforcement of the bill. Based on information from the FTC, CBO estimates that the costs of this study would not be significant.

PAY-AS-YOU-GO CONSIDERATIONS: None.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 3113 would preempt state and local regulation of UCE to the extent that such laws exist and conflict with this bill's requirements. In addition, the bill would preempt state and local liability laws as they apply to Internet service providers (ISPs) in certain instances. These preemptions would be intergovernmental mandates as defined in UMRA, but CBO estimates that complying with these mandates would result in no direct costs to state and local governments and thus would not exceed the threshold established in that act (\$55 million in 2000, adjusted annually for inflation). Tribal governments would not be affected by these provisions.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 3113 would impose private-sector mandates as defined by UMRA on senders of UCE. The bill would require senders to identify their messages as UCE, and provide a valid return electronic-mail address and an accurate routing number within their messages. The bill also would require persons who send UCE to provide the recipients of their messages with an option to discontinue receiving UCE from the sender, and to notify recipients of that option to discontinue in each UCE message.

In addition, H.R. 3113 would make it unlawful for any person to initiate the transmission of an UCE message to any person within the United States in violation of a policy developed by an ISP governing the use of its equipment for transmission of UCE messages based on the guidelines outlined in the bill. However, this would have only a limited effect on the private sector because the Computer Fraud and Abuse Act of 1986 currently prohibits some forms of UCE transmissions. Nonetheless, it is not clear that existing federal law prohibits all transmissions of UCE in violation of an ISP policy against such transmissions.

Based on information from government and industry sources, CBO estimates that the direct costs of those mandates would not exceed the annual threshold established by UMRA for private-sector mandates (\$109 million in 2000, adjusted for inflation).

ESTIMATE PREPARED BY:

Federal Costs: Ken Johnson

Impact on State, Local, and Tribal Governments: Shelley Finlayson

Impact on the Private Sector: Jean Wooster

ESTIMATE APPROVED BY:

Peter H. Fontaine

Deputy Assistant Director for Budget Analysis